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In re Application of	:	
CATE et al	:	
Application No.: 09/674,399	:	
PCT No.: PCT/US00/02028	:	
Int. Filing Date: 26 January 2000	:	DECISION
Priority Date: 05 April 1999	:	
Atty. Docket No.: P03958US1	:	
For: METHOD AND MEANS FOR	:	
FILLING NATURAL CASING	:	
SAUSAGE	:	

This is a decision on applicants' "REQUEST TO VACATE NOTICE OF ABANDONMENT" filed in the U.S. Patent and Trademark Office (PTO) by facsimile transmission on 29 October 2001.

BACKGROUND

On 26 January 2000, applicants filed international application No. PCT/US00/02028 which claimed a priority date of 05 April 1999, and which designated the United States.

A Demand was not filed with the International Preliminary Examining Authority electing the United States prior to the expiration of 19 months from the priority date, and as a result the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee expired 20 months from the priority date, i.e. 05 December 2000.

On 31 October 2000, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the basic national fee and the surcharge for late filing of the oath or declaration.

On 28 November 2000, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required.

On 26 December 2000, applicants filed a "COMPLETION OF FILING REQUIREMENTS" which was accompanied by, inter alia, a declaration of the inventors.

On 22 June 2001, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) and a NOTIFICATION OF A DEFECTIVE OATH OR DECLARATION (Form PCT/DO/EO/917) which indicated that the declaration filed 26 December 2000, was unacceptable in that it was "not signed by all inventors." The Form PCT/DO/EO/916 set a non-extendable response period of one month from the maildate of the notification.

On 26 September 2001, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) which indicated that the application was held to be abandoned for failure to respond to the Form PCT/DO/EO/905.

On 29 October 2001, applicants filed the present request to vacate the holding of abandonment on the grounds that a response to the Form PCT/DO/EO/905 was filed on 26 December 2000. The request is being treated as a petition under 37 CFR 1.181.

DISCUSSION

A review of the application file reveals that applicants filed a timely response to the Form PCT/DO/EO/905, and that the application was apparently held to be abandoned, the indication on the Form PCT/DO/EO/909 notwithstanding, for failure to timely respond to the Form PCT/DO/EO/916. Thus, applicants evidence submitted in proof of the 26 December 2000 filing is irrelevant.

A review of the declaration submitted 26 December 2000, reveals that it bears the signatures of all nine inventors named in the international application. Therefore, the indication on the Form PCT/DO/EO/916 and the accompanying Form PCT/DO/EO/917 that the declaration did not contain all of the required signatures was in error, and as such the NOTIFICATION OF DEFECTIVE RESPONSE and the subsequent NOTIFICATION OF ABANDONMENT are hereby VACATED.

However, a further review of the declaration filed 26 December 2000, reveals that it is not acceptable for entry into the national stage as is further discussed below. The declaration of the inventors is comprised of a declaration which has been executed by all of the inventors except for inventor Ottow and the signature page of a second declaration which has been

executed by inventor Ottow as well as inventor Enklaar. Each submitted declaration must be complete in and of itself. Therefore, in order to satisfy the requirements of 35 U.S.C. 371, applicants must submit either a single declaration executed by all of the inventors or in the alternative a complete copy of the declaration as executed by inventor Ottow.

CONCLUSION

For the reasons above the petition is GRANTED, and the holding of abandonment is hereby WITHDRAWN.

However, as discussed above the application is still not in condition for acceptance into the national stage under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for the mailing of a new NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that a complete declaration as discussed above is required.



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